

No. 9 (1) 81-6Lab. 14991.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workmen and the management of M/s. Motha Electro Steel Ltd., Industrial Area, Bhiwani.

BEFORE SHRI BANWARI LAL DALAL, PRESIDING OFFICER, LABOUR COURT, HARYANA, ROHTAK

Reference No. 46 of 1979

Between

SHRI NAND KISHORE WORKMAN AND THE MANAGEMENT OF M/S MOTHAS ELECTRO STEEL LTD., INDUSTRIAL AREA, BHIWANI.

Present—

Shri Gopal Krishan for the workman.
Shri M. M. Kaushal for the management.

AWARD

This reference has been referred to this court by the Hon'ble Governor,—vide order No. ID/Bhiwani/6-79/9890, dated 28th February, 1979 under section 10(i) (c) of the I. D. Act. for adjudication of the dispute existing between Nand Kishore and Matro Electro Steel. The term of the reference was :—

Whether the termination of service of Shri Nand Kishore was justified and in order? If not, to what relief is he entitled?

On the receipt of the order of reference notices as usual were sent to the parties. The parties appeared filed their respective pleadings and issues as under were framed on the basis of their pleas :—

1. Whether the enquiry conducted by the management was fair and proper and according to the natural justice? If so, what effect?
2. Whether the termination of the services of the workman is justified and in order? If not, to what relief he is entitled.

Issue No. 1 was treated as preliminary. The management examined Shri J.C. Vig and Shri Ashok Kumar Gupta as their witness and closed their case on issue no. 1. The workman examined Shri Kishore himself and Shri Maya Ram as his witness and lost his case. I heard the representatives of the parties and decide the issue as under :—

Issue No. 1 :—

The claim statement filed by the workman on 9th April, 1979 disclosed the charges levelled against the workman and the qualification or disqualifications of a supervisor and further stated therein that no show cause notice or the opportunity of addressing arguments was given to him. The workman filed the amended claim statement stating the defect, in the termination order on its being not a speaking order and full of unfair labour practices. He has also related the defects of enquiry proceedings which are given at page 19 of the file that the chargesheet was not in accordance with the standing order. No list of witnesses and their statements was supplied to the workman. The statements of prosecution witnesses were not recorded in his presence and the workman was not allowed to cross examine them. He has further indicated that he was not allowed the assistance of co-worker nor he was allowed to produce his defence and the enquiry was conducted by prejudiced officer in whom the workman had no faith.

On the other hand the management has pleaded that the workman was dismissed after holding proper enquiry in accordance with the provision of standing order, principle of natural justice. He was allowed the full opportunity to cross examine the management witnesses. The assistance of co-employee was not denied to him. He was also given the opportunity to produce his defence. The management witnesses consistently proved the conduct of the enquiry wherein reasonable full opportunity was given to the workman. From the enquiry proceedings placed on file it is evident the workman has cross examined the management witness Shri Ashok Kumar and he was allowed the opportunity of cross examine Shri P.K. Sharma but he did not avail of the same. He has examined Shri Mohinder Kumar as his witness in his defence and he made his statement also before the enquiry Officer. Shri Siri Kishan who appeared as WW-1 before me has given out in his cross examination that he was with the workman and participated in the enquiry along with the workman. He has further state that he was given the authority letter to appear on behalf of the workman. The management has drawn out from the workman in his cross examination that it was correct that he attended the enquiry proceedings and participated in the same. Shri

A.K. Gupta and Shri Patel Kumar Sharma, Shri Mohinder Kumar and Shri Prem Singh appeared on behalf of the management in the enquiry proceedings on 23rd November, 1978. He further admitted that statements were recorded in his presence and admitted as correct that he asked questions in cross-examination. He put his signatures on Ex. MW-1/1 the enquiry proceedings at point 'A'. The statements of WW-1 and WW-2 are self contradictory. The workman appearing as WW-2 has stated in his cross-examination that he was appearing alone in the enquiry while WW-2 has stated that he appeared along with the workman as authorised representative in the enquiry. The workman has failed to prove the defect pointed out by him in his pleadings about the vitiation of enquiry. From the evidence produced before me and on the perusal of the enquiry file and the findings of the Enquiry Officer I am of the view that the workman was given the full opportunity and the charges levelled against the workman were fully proved and the enquiry report which is based on evidence is not perverse nor it is vitiated in any way. The issue is accordingly decided in favour of the management.

Issue No. 2:—

When issue No. 1 has been decided in favour of the management and the charges are of grave and serious nature, constituting act of misconduct and which are proved, the workman deserves no less punishment than dismissal. The termination is therefore justified and in order. The workman is not entitled to any relief. The reference is answered and returned accordingly.

Dated 14th December, 1981.

BANWARI LAL DALAL,
Presiding Officer,
Labour Court, Haryana, Rohtak.

Endorsement No. 4329, dated 17th December, 1981

Forwarded (four copies) to the Secretary to Govt., Haryana, Labour & Employment Departments, Chandigarh as required under section 15 of the I.D. Act.

BANWARI LAL DALAL,
Presiding Officer,
Labour Court, Haryana, Rohtak.

No. 9(1)-81-6Lab/14993.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s The Panipat Cooperative Sugar Mills Ltd., Panipat.

BEFORE SHRI BANWARI LAL DALAL, PRESIDING OFFICER, LABOUR COURT, HARYANA,
ROHTAK

Reference No. 128 of 1979

between

SHRI SANTOSH KUMAR WORKMAN AND THE MANAGEMENT OF M/S PANIPAT COOPERATIVE
SUGAR MILLS LTD., PANIPAT.

Present :

Shri Gian Chand for the workman.
Shri R. S. Malik for the management.

AWARD

This reference has been referred to this court by the Hon'ble Governor,—vide his order No. ID/KNE/23-79/27078, dated 26th June, 1979 under section 10(1)(c) of the I.D. Act for adjudication of the dispute existing between Shri Santosh Kumar, workman and the management of M/s The Panipat Cooperative Sugar Mills Ltd., Panipat. The term of the reference was :—

“Whether the termination of services of Shri Santosh Kumar was justified and in order? If not, to what relief is he entitled?”

On the receipt of the order of reference notices as usual were sent to the parties. The parties appeared, filed their respective pleadings on the basis of which the following issues were framed :—

(1) Whether the workman was a regular employee of the mill?

(2) Whether the termination of the services of the workman was justified and in order? If not, to what relief is he entitled?

The management examined Shri Jagdish, Time Keeper as their only witness and closed their case. The workman examined himself as his witness and closed his case. I heard the learned representatives of the parties and decide issues as under :—

Issue No. 1.—The workman has stated in his claim statement that he worked as a Lab. Chemist for the last five seasons. He was not given work during the season 1977-78 and the management terminated his services.

He was also not called to work during the crushing season 1978-79. The workman deposed when he appeared as WW-1 that he worked upto 1975-76 season as an apprentice Lab. Chemist and during the season 1976-77 he worked as Lab. Chemist. He further deposed that he used to sign as Lab. Chemist on Daily Juice Analysis sheet and also on mollasis sheet. The signature of other Lab. Chemists were also there on these sheets. On the start of 1977-78 season he was not allowed duty. No charge-sheet or show cause notice was given to him. He produced the copy of the certified standing orders relating to the classification of the workman which was Exhibited WW-1/1. He admitted in his cross-examination that his statement that he worked as a Lab. Chemist during the session 197677 only is correct and not as given in his claim statement and demand notice that he worked for last five seasons as Lab. Chemist. He has also admitted that he used to get his wages twice a month but he did not recollect as to how much he was getting. He did not receive any appointment letter except a slip which was given by the Chief Chemist to the time office.

The management has pleaded that the workman was a casual daily paid worker during the season 1976-77 employed as and when the work was available and he was not a seasonal worker as claimed by the workman. The management contention is proved by the admission of the workman that he was paid twice in a month and was appointed by the Chief Chemist with a slip delivered to the time office. The workman was, therefore, not a regular employee of the mill. This issue is accordingly decided against the workman.

Issue No. 2.—In view of my findings on issue No. 1 it was not required that the workman was to be issued a charge-sheet or notice before termination of his services as the workman was a casual daily rated workman and not a regular seasonal employee of the respondent. The termination of the workman was therefore, justified and in order. The workman is not entitled to any relief. The reference is answered and returned accordingly.

Dated the 14th December, 1981.

BANWARI LAL DALAL,
Presiding Officer,
Labour Court, Haryana, Rohtak.

Endorsement No. 4331, dated 17th December, 1981

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh as required, under section 15 of the I. D. Act.

BANWARI LAL DALAL,
Presiding Officer,
Labour Court, Haryana, Rohtak.

No. 9(1)81-6 Lab. 15073.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workmen and the management of M/s Saraswati Ceramics and Refractories Private Limited, Plot No. 105, Sector 25, Ballabgarh.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER,
LABOUR COURT, HARYANA, FARIDABAD

References No. 345/80, 333/80 and 343/80.

Between

SARVSHRI DAROGA BHAGAT, RAM ABHILEKH AND HIRA LAL, WORKMEN AND THE MANAGEMENT OF M/S SARASWATI CERAMICS AND REFRACTORIES PRIVATE LIMITED, PLOT NO. 105, SECTOR 25, BALLABGARH

Present

Shri Sunehri Lal, for the workmen.

Shri D.D. Aggarwal for the respondent management.

AWARD

These references No. 345/80, 333/80 and 343/80 have been referred to this Court by the Hon'ble Governor of Haryana, vide his order No. ID/FD/52-80/39858, dated 4th August, 1980, ID/FD/52-80/39786, dated 4th August, 1980, ID/FD/52-80/39846, dated 4th August, 1980 under section 10(i) (c) of the Industrial Disputes Act, 1947, existing between Shri Daroga,

Bhagat, Ram Abhilekh and Hira Lal and the management of M/s Saraswati Ceramics and Refractories Private Limited, Plot No. 105, Sector 25; Ballabgarh. The terms of the references were :—

Whether the termination of services of the workman Shri Daroga, Ram Abhilekh and Hira Lal were justified and in order ? If not, to what relief they are entitled ?

After receiving these references, notices were issued to the parties, they appeared and filed their pleadings in the Court. The case of the workmen according to their demand notices, claim statements and rejoinders is that they are working in the respondent factory since last 7/8 years. There is a union in the factory and they raised general demand notice against the respondent which was settled by the Deputy Labour Commissioner, Faridabad for bonus, uniform etc. There were 14 active union office bearers in the factory who raised the demand of different type against the respondent. On 1st February, 1980 the respondent stopped all the 14 workmen at the gate for which the workmen complaint before the Labour authorities on which there was a settlement on 5th March, 1980. According to that settlement the respondent took all the workmen on duty, but began harassing the workmen for one reason or the other. At last they stopped all the workmen on 12th March, 1980 and the workmen were not paid the salary for the month of January, 1980. The workmen made a complaint to the Conciliation Officer for stopping the workmen on the gate. The respondent prepared a scheme against all the workmen and they put a broken box in the quarters of the workmen which are situated just behind the factory and declared the workmen thieves. and on that charge of theft they called the police and the police took the workmen to the police station, Ballabgarh. The police beaten all the workmen very severely and the in-charge of the police told all the workmen before the owner of the factory that either you resign from the service up to 12 a.m. next day otherwise you shall be treated in same manner again. The owner of the factory brought the workmen in the factory and got sign the papers which were already ready to sign and gave the accounts of the workmen on the same day. The workmen signed all the papers put before them due to fear of the police as told them by the police incharge so there was no alternative to sign these papers to save their bodily torture as the police had made with the workmen. So the owner of the factory took papers signed under threat and duress of the police. The workmen were terminated due to their union activities and demand raised by them under the police threat so it was illegal action of the respondent management against the workmen and the workmen are entitled for their reinstatement and full back wages.

The case of the respondent management according to its written statement is that the workmen resigned on 15th March, 1980 on their own sweet-will, which were accepted by the respondent and the workmen took their full and final on the same day and gave the receipt in the presence of Shri Sunehari Lal, Labour Leader, who signed the same. The respondent had denied all the allegations in its written statement and stated that the workmen took their full and final on their own will.

On the pleadings of the parties, the following issues were framed :—

- (1) Whether the termination of the services of the workmen is proper, justified and in order ? If not, to what relief they are entitled ?
- (2) Whether it is a case of voluntarily resigning of jobs of the respondent by the workmen ? If so, to what effect ?
- (3) Relief ?

According to the order of my predecessor, Issue No. 2 shall be treated as preliminary issue and be decided first. After framing the issue on 28th October, 1980, there is an order of consolidation dated 2nd January, 1981 on the statement of the parties, the references

No. 333/80, 343/80 and 345/80 were consolidated as all the references based on the same facts and law. So the reference were consolidated into one and there is order that the evicence shall be recorded in Reference No. 345 of 1980 of Shri Durga Bhagat. So I have to decide all the references in one reference. My issuewise findings are as under :—

Issue No. 2.—According to the orders of my predecessor Issue No. 2 has been treated as preliminary issue and decided first. Issue No. 2 is whether the workmen resigned voluntarily from their jobs ?

On the issue the representative of the management argued that the workmen were not terminated on the basis of union activities rather they resigned on their own will and took their full and final on 15th March, 1980. There was no threat and duress at the time of resignation or taking the full and final. The representative of the management referred the statements of the workmen in which they have said that at the time of resignation in the factory no police person were present. So when there was no police there at the time of signing the resignation then it was not a threat and duress or force of the police as alleged by the workmen in the demand notices and claim statements. It is a afterthought story which can not be believed. He again referred the receipts of full and final accounts on which Shri Sunehari Lal, Labour Leader has also witnessed of taking their full and final accounts. He argued that the workmen do not complaint against this threat and duress to any authority. He further argued that on 25th April, 1980 the management was called by the Deputy Labour Commissioner for hearing the complaint of the workmen but the workmen did not appear before him and he filed the complaints. He referred the statement of Shri D.D. Aggarwal MW-1, who is manager of the factory and who has stated in his statement that on 5th March, 1980 there was a settlement about the demands raised on 7th February, 1980 before the Labour -cum-Conciliation Officer. The copy of which is Ex. M-1. On 6th March, 1980 the workmen resumed their duties as per settlement Ex. M-1 and they continued working till 10th March, 1980. On 11th March, 1980 their factory was closed because of off day and on 12th March, 1980 these 14 workers did not join their duties. When he reached the factory these workmen told him that either their pay should be raised or their final accounts should be given to them. He demanded their resignation on 13th March, 1980 and they resigned on the asking of the manager. The resignation of Shri Durga Parsar, Ex. M-2 Hira Lal, M-3 and Ram Abhilekh Ex. M-4. The resignation were sent to the Director of the company, who accepted them,—vide his orders which are Ex. M-5, M-6 and M-7, respectively. On 14th March, 1980 these workmen came to him and collected their accounts which was settled on that day and paid on 15th March, 1980. The final receipts of the payments are Ex. M-8, M-9 and M-10 respectively. The receipts of payments are also signed by Shri Sunehari Lal, workmen's representative. So in this way the workmen collected their full and final accounts from the management. He further stated that according to Ex. M-1 the Deputy Labour Commissioner, Faridabad was named sole arbitrator who fixed 25th April, 1980 for hearing, on which day none of the workmen came present before him. The representative of the management argued that after taking the full and final and giving their resignations wilfully the workmen are not entitled for any relief. After giving the resignation voluntarily the afterthought story of the workmen cannot be believed and it is proved after looking the resignations on the file that the workmen resigned of their own will and took their full and final so the reference is bad in law. He further argued if there was any beating of the workmen as they have alleged, they should have medically examined and they should have produced before the court which is not done by the workmen. So the story of the workmen can not be believed.

The representative of the workmen argued that all the foutreen workmen whose references are pending in this court were terminated by the respondent management due to their union activities in the factory. The representative of the management terminated 14 workmen in one day clearly shows that how they were terminated. The fourteen workmen did not resigned in one day, so it shows that the resignations were taken under threat and duress of the police. The workmen are working in the factory since last seven or eight years

as they have stated in their rejoinder and there was a union in the factory. They used to raise the demands in the factory for their benefits. They raised one demand in the year 1978 which was settled by the Labour Authorities on 7th April, 1978 which is Ex. W-4. The settlement itself shows that the respondent has accepted seven demands of the workmen on the demand notice dated 12th January, 1978. In this way they again raised the demand notice as admitted by the respondent witness Shri. D.D. Aggarwal, Manager as MW-1 on 7th February, 1980 on which there was a settlement before the Conciliation Officer on 5th March, 1980. The copy of the settlement is Ex. M-1. According to this settlement the respondent had agreed to give work to these fourteen workmen and for their wages of the off-days it was decided that Shri Darmender Nath, Deputy Labour Commissioner decide the matter which was to be binding on both the parties. The demand was raised because the respondent stopped the workmen on the gate on 1st February, 1980 because they were demanding the bonus for the year 1978-79. So by the intervention of the labour authorities the workmen resumed their duty on 6th March, 1980 according to the statement of MW-1. But the respondent harassed the workmen in one way or the other and they again stopped the workmen on 12th March, 1980 on the gate. After stopping these workmen on the gate these workmen made the complaint of the same stoppage to the Conciliation Officer which is Ex. W-1 and send the copies of the same to the other authorities by registered letter which is Ex. W-2/1. Then the respondent prepared a scheme to get rid of these workmen and through a broken box in the quarters of the workmen which are adjacent to the factory and situated at the back and alleged this workmen as thieves. The respondent called the police and the police took all these workmen to the Police Station, Ballabgarh and gave severe beating in presence of the owner of the factory. The Police Incharge told the workmen in the presence of the owner of the factory that either they will resign from the job up to 12.00 a.m. next day or otherwise you inform us and we will put them again in the same way till they sign on the papers. The respondent management took all the workmen from the Police Station to the factory and put the papers before them which were already ready for signatures and they got sign these papers under the threat of the police. and the workmen had no alternative except to sign these papers to save their skin from physical torture and they signed the same. He further argued that the resignations are written in the same ink and same hands but the date is given on different ink and hands. On the resignations they have shown the dated 13th March, 1980 and on the receipts is 15th March, 1980. In the written statement the respondent has written that the workmen resigned on 15th March, 1980 and the same were accepted on the same day and they took their final on same day, i.e., 15th March, 1980 and further again in letter to the Conciliation Officer dated 13th May, 1980 which is Ex. WW5/1. They have shown 15th March, 1980 the date of resignation and acceptance and in the statement of witness of the respondent he has stated that on 12th March, 1980 all the fourteen workmen met him at the factory gate and they told him either their pay should be raised or their final accounts be given to them and he demanded the resignation of the workmen. The workmen gave the resignation on 13th March, 1980 and took their full and final on 15th March, 1980. He further put forward the arguments and showed me Ex. W-W-4/1 the proceedings of the Conciliation Officer in which also they have stated before the Conciliation Officer that these 14 workmen resigned of their own will on 15th March, 1980 and on the same day these were accepted and the workmen took their full and final accounts. In this way these documents show that the documents are fabricated and afterthought. On one place the same respondent says that the resignation was taken on 13th March, 1980 and on the other place they say that the resignation were taken on 15th March, 1980. It shows that the resignations were not given voluntarily, but by force and duress and there was no date on the resignations and receipts and they have put the dates afterwards. So the resignation were taken under duress and threat and after given these resignations under threat, the workmen made the complaints to the Labour Authorities including the Labour Commissioner on 15th March, 1980 and sent the same through registered letters. The complaints is Ex. W-2 and on those complaints the Labour Inspector send the notice to the respondent,—vide Ex. W-3 and called the respondent in his office for 18th April, 1980. The respondent did not come present in the office and after that the Labour Inspector advised the workmen to give the demand notice so after that date the workmen submitted their demand notice on

30th April, 1980. He further argued that the workmen did not take any action after giving the resignation is totally false. The workmen approached every authority for their help. The workmen has called the clerk of the Labour Officer who has come in the court as WW-4 Shri Mohinder Nath Mehta, Assistant, Labour Office, Ballabgarh and he submitted that they received the complaints dated 15th March, 1980 and they issued the notice to that complaint twice, but no body came present from side of the respondent. This shows that, after the resignations and receipts taken under the force and threat and the workmen approached the proper authority for their complaints, who advised them to submit their demand notices and according to their advise they submitted the demand notice as before this court. So the resignations and receipts taken under threat and duress cannot be considered as referred in AIR-1975 page 333 in case M. Ethirajulee Naidu v/s. K.R. Chinni Krishnan Chettian" Admission by a person that he signed on resignation and full and final receipts etc. under threat and under duress is not admission of execution of documents in the eye of law. And the claimants admitted their signatures the documents under threat and tortured in the custody of police". It is proved that there was a union in the factory and these 14 workmen were active members of the union and raised demand notice for the benefits of the workmen and there are settlement on their demand before the Deputy Labour Commissioner and Conciliation Officer. So it is clear that the workmen had not resigned of their own will, but due to union activities. The witness of the respondent MW-1 has admitted this fact that there was demand notice of the workmen and were settled by the labour authorities after the admission of the respondent witness of this fact it is clear that there were some demand notice of the workmen and the workmen who were terminated by this force and threat are the active members of the union. So there is no need of any proof after the admission of the respondent witness. According to the witness of the respondent the workmen met him outside the gate on 12th March, 1980 and the respondent witness asked them to resign then why the resignations were not taken on the same day, why on the next day. The workmen want jobs and they are out of work. There was no reasoning and no grounds why these 14 workmen resigned on the same day, it clears how they resigned under the threat.

After hearing the arguments of both the parties and going through the whole file, I am of the view that the plea taken by the respondent cannot be believed as argued by the representative of the workmen. There is a force in the arguments put forward by the workmen's representative and in the doubtful circumstances, it is clear that the resignations were taken by the respondent under threat and duress and they have not given of their own will. It is proved on the file that there was a union in the factory and the workmen terminated are their active members. They raised certain demands for the benefits of the workmen which were settled by the labour authorities. So it is clear that resignations of 14 workmen were taken under threat and duress. Usually the lot of workmen did not resign on one day. It also create a doubt in the mind why they resigned and after resignation, they made a complaint to the labour authorities, who called the respondent to hear, but the respondent fails to appear before the Labour authorities. Under these circumstances I hold that the resignations were not given voluntarily by the workmen but taken under threat and duress by the respondent. So I decide this issue in favour of the workmen and against the respondent:

Issue No. 1—Issue No. 1 is as per reference ? After deciding issue No. 2 against the respondent there is no need to give another opportunity to any party. When issue No. 2 has been decided against the respondent as discussed above and the resignations were taken under threat and duress so it is not a case of resignation of the workmen of their own will, but it was termination of the workmen, which is not justified and proper. So the workmen are entitled for their re-instatement and continuity of services and with full back wages.

Dated, the 1st December, 1981.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endstt. No. 3463, dated the 18th December, 1981

Forwarded (four copies) to the Commissioner and Secretary to Government of Haryana, Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana,
Faridabad.

No. 9(1) 81-6/Lab/15074. — In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Haryana, Faridabad, in respect of the dispute between the workmen and the management of M/s. Sarswati Ceramics and Refractories Pvt. Ltd., Plot No. 105, Sector 25, Ballabgarh.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER,
LABOUR COURT, HARYANA, FARIDABAD

Reference Nos. 335/80, 337/80, 338/80, 342/80, 341/80, 344/80

between

SARVSHRI RAM KISHORE, RAJA RAM, BALJORE, KESHAV, KALAP NATH,
AND RAM NIHORE, WORKMEN AND THE RESPONDENT MANAGEMENT
OF M/S SARSWATI CERAMICS AND REFRACTORIES PRIVATE LIMITED,
PLOT NO. 105, SECTOR 25, BALLABGARH

Shri Sunehari Lal for the workmen.

Shri D.D. Aggarwal for the respondent management.

AWARD

These references No. 335/80, 337/80, 338/80, 342/80, 341/80, 344/80 have been referred to this Court by the Hon'ble Governor of Haryana, — vide his order No. ID/FD/52-80/39798/ID/FD/52-80/39810, ID/FD-52/80/39816, ID/FD/52-80/39840, ID/FD-52-80/39834, ID/FD/52-80/39852, dated 4th August, 1981, under section 10(i) (c) of the Industrial Disputes Act, 1947, existing between S/Shri Ram Kishore Raja Ram, Baljore, Keshav, Kalap Nath and Ram Nihore and the respondent management of M/s. Sarswati Ceramics and Refractories Private Limited, Plot No. 105, Sector 25, Ballabgarh. The terms of the references were—

Whether the termination of services of the workmen, S/Shri Ram Kishore, Raja Ram, Baljore, Keshav, Kalap Nath and Ram Nihore were justified and in order? If not, to what relief they are entitled?

After receiving these references, notices were issued to the parties. The parties appeared in the court on 4th September, 1980. But on 3rd November, 1980, when the case was fixed for claim statement the respondent disappeared and my predecessor passed *ex parte* order against the respondent and award was also sent to the Government on 30th November, 1980. After that the respondent filed an application for setting aside the *ex parte* order which was set aside by the Court on 21st January, 1981.

The case of the workmen according to their demand notice, claim statements and rejoinder is that they are working in the respondent factory for the last 7/8 years. There is a union in the factory and they raised general demand notice against the respondent

which was settled by the Deputy Labour Commissioner, Faridabad for bonus, uniform etc. There were 14 active union office bearers in the factory who raised the demand of different type against the respondent on 1st February, 1980 the respondent stopped all the 14 workmen at the gate for which the workmen complaint before the Labour Authorities on which there was a settlement on 5th March, 1980. According to that settlement the respondent took all the workmen on duty, but began harassing the workmen for one reason or the other. At last they stopped all the workmen on 12th March, 1980 and the workmen were not paid the salary for the month of January, 1980. The workmen made a complaint to the Conciliation Officer for stopping the workmen on the gate. The respondent prepare a scheme against all the workmen and they put a broken box in the quarters of the workmen which are situated just behind the factory and declared the workmen thieves on that charge of the theft they called the police and the police took the workmen at the police station, Ballabgarh. The police beaten all the workmen very severely and the incharge of the police told all the workmen before the owner of the factory that either you resign from the service upto 12.00 a.m. next day otherwise you shall be treated as same manner again. The owner of the factory brought the workmen in the factory and got signed the papers which were already to sign and gave the accounts of the workmen on the same day. The workmen signed all the papers put before them due to fear of the police and told them by the police incharge so there was no alternative to sign these papers to save their bodily torture as the police had made with the workmen. So the owner of the factory took papers signed under threat and duress of the police. The workmen were terminated due to their union activities and demand raised by them under the police threat so it was illegal action of the respondent management against the workmen and the workmen are entitled for their reinstatement with continuity of service and back wages.

The case of the respondent management according to its written statement is that the workmen resigned on 15th March, 1980 on their own sweet will, which were accepted by the respondent and the workmen took their full and final on the same day and gave the receipt in the presence of Shri Sunehari Lal, Labour Leader who signed the same. The respondent had denied all the allegation in its written statement and stated that the workmen took their full and final on their own will.

On the pleadings of the parties, the following issues were framed:—

1. Whether the termination of services of the workmen is proper, justified and in order ? If not, to what relief they are entitled ?
2. Whether it is a case of voluntarily resigning of jobs of the respondent by the workmen ? If so, to what effect ?
3. Relief ?

According the order of my predecessor issue No. 2 shall be treated as preliminary issue and be decided first. After framing the issue on 28th October, 1980, there is a order of consolidation, dated 30th March, 1981. On the statement of the parties, the reference Nos 335/80, 337/80, 338/80, 3342/80, 341/80 and 34/480, were consolidated as all the references based on the same facts and law. So the references were consolidated into one and there is order that the evidence shall be recorded in Reference No. 335/80 of Shri Ram Kishore. So I have to decide all the references in one reference. My issue-wise findings are as under:—

Issue No. 2:

According the order of my predecessor issue No. 2 has been treated as preliminary issue and decided first. Issue No. 2 is whether the workmen resigned voluntarily from their jobs.

On the issue the representative of the management argued that the workmen were not terminated on the basis of union activities rather they resigned on their own will and took their full and final on 15th March, 1980. There was no threat and duress at the time of resignation or taking the full and final. The representative of the management referred the statements of the workmen in which they have said that at the time of resignation in the factory on police persons were present. So when there was no police there at the time of signing the resignation then it was not a threat and duress or force of the police as alleged by the workmen in the demand notices and claim statements. It is a after thought story which can not be believed. He again referred the receipts of full and final accounts on which Shri Sunehri Lal, Labour Leader has also witnessed of taking their full and final accounts. He argued that the workmen do not complain against this threat and duress to any authority. He further argued that on 25th April, 1980 the management was called by the Deputy Labour Commissioner for hearing the complaint of the workmen but the workmen did not appear before him and he filed the complaints. He referred the statement of Shri D.D. Aggarwal MW-1 who is manager of the factory and who has stated in this statement that on 5th March, 1980 there was a settlement about the demands raised on 7th February, 1980 before the Labour cum-Conciliation Officer. The copy of which is Ex. M-1. On 6th March, 1980 the workmen gave their duties as per settlement Ex. M-1 and they continued working till 10th March, 1980. On 11th March, 1980 their factory was closed because of off day and on 12th March, 1980 these 14 workers did not join their duties. When they reached the factory these workmen told him that either their pay should be raised or their final accounts should be given to them. He demanded their resignation on 13th March, 1980 and they resigned on the asking of the manager. The resignation of Shri Ram Nihore, Ex. M-1, Keshave, Baljore, Ex. M-34 Shri Raja Ram, Ex. M-4, Kalap Nath, Ex. M-5 and Shri Ram Kishore, Ex. M-6. The resignations were sent to the Director of the company, who accepted them, — per his order which are Ex. M-72, Ex. M-8, Ex. M-9, M-10, M-11, M-12, respectively. On 14th March, 1980 these workmen came to him and collected their accounts which was settled on that day and paid on 15th March, 1980. The final receipts of the payments are Ex. M-13, M-14, Ex. M-15 M-16, M-17, M-18, respectively. The receipts of payments are also signed by Shri Sunehar Lal, workmen's representative. So in this way the workmen collected their full and final accounts from the management. He further stated that according to Ex. M-1 the Deputy Labour Commissioner, Faridabad was named sole arbitrator who fixed 25th April 1980 for hearing, on which day none of the workmen came present before him. The representative of the management argued that after taking the full and final and giving their resignation willfully the workmen are not entitled for any relief. After giving the resignation voluntarily after thought story of the workmen can not be believed and it is proved after looking the resignation of the file that the workman resigned of their own will and took their full and final so the reference is bad in law. He further argued if there was any beating or the workmen as they have alleged, they should have medically examined and they should have produced before the court which is not done by the workmen. So the story of the workmen can not be believed.

The representative of the workmen argued that all the fourteen workmen whose references are pending in this Court were terminated by the respondent management due to their union activities in the factory. The representative of the management terminated 14 workmen in one day clearly shows that how they were terminated. The fourteen workmen did not resign in one day, so it shows that the resignation was taken under threat and duress of the police. The workmen are working in the factory since last seven or eight years as they have stated in their rejoinder and there was union in the factory. They used to raise the demand in the factory for the benefits. They raised one demand in the year 1978 which was settled by the labour authorities on 7th April, 1978, which is Ex. W-4. The settlement itself shows that the respondent has accepted seven demands of the workmen on the demand notice dated 12th January, 1978. In this way they again raised the demand notice as admitted by the respondent witness Shri D.D. Aggarwal, Manager as MW-1 on 7th February, 1980 on which there was a settlement before the conciliation Officer on 5th March, 1980. The copy of the settlement is Ex. M-1. According to this settlement the respondent had agreed

to give work to these fourteen workmen and for their wages of the off day it was decided that Shri Dharmender Nath, Deputy Labour Commissioner decided the matter which was to be binding on both the parties. The demand was raised because the respondent stopped the workmen on the gate on 1st February, 1980 because they were demanding the bonus for the year 1978-79. So by the intervention of the Labour authorities the workmen resumed their duty on 6th March, 1980, according to the statement of MW-1. But the respondent harassed the workmen in one way or the other and they again stopped the workmen on 12th March, 1980 on the gate. After stopping these workmen on the gate these workmen made the complaint of the same stoppage to the conciliation officer which is Ex. W-1 and sent the copies of the same to the other authorities by registered letters which is Ex. W-2/1. Then the respondent prepared a scheme to get rid off these workmen and through a broken box in the quarters of the workmen which are adjacent to the factory and situated at the back and alleged these workmen as thieves. The respondent called the police and the police took all these workmen to the Police Station, Ballabgarh and gave severe beating in presence of the owner of the factory. The police incharge told the workmen in the presence of the owner of the factory that either they will resign from the job upto 12,00 p.m. next day or otherwise you inform us and we will put them again in the same way still they sign on the papers. The respondent management took all the workmen from the police station to the factory and put the papers before them which were already ready for signatures and they got signed these papers under the threat of the police and the workmen had no alternative except to sign these papers to save their skin from physical torture and they signed the same. He further argued that the resignation are written in the same ink and same hands, but the date is given on different ink and hands. On the resignations they have shown the date 13th March, 1980 and on the receipts it is 15th March, 1980. In the written statement the respondent has written that the workman resigned on 15th March, 1980 and the same were accepted on the same day and they took their final on the same day i.e. 15th March, 1980 the date of resignation and acceptance and in the statement of witness of the respondent he has stated that on 12th March, 1980 all the fourteen workmen met him at the factory gate and they told him either their pay should be raised or their final accounts be given to them and he demanded the resignation of the workmen. The workmen gave the resignation on 13th March, 1980 and took their full and final on 15th March, 1980. He further put forward the arguments and shown me Ex. WW-4/1 the proceedings of the Conciliation officer in which also they have stated before the conciliation officer that these 14 workmen resigned of their own will on 15th March, 1980 and on the same day these were accepted and the workmen took their full and final accounts. In this way these documents show that the documents are fabricated and after thought. On one place the same respondent says that the resignations were taken on 13th March, 1980 and on the other place they says that the resignations were, taken on 15th March, 1980. It shows that the resignations were not given voluntarily, but by force and duress and there was no date on the resignations and receipts and they have put the dates afterwards. So the resignations were taken under duress and threat and after giving these resignations under threat, the workmen made the complaints to the labour authorities including the Labour Commissioner on 15th March, 1980 and sent the same through registered letters. The complaint is Ex. W-2 and on those complaints the Labour Inspector sent the notice to the respondent, - vide Ex. W-3 and called the respondent in his office for 18th April, 1980. The respondent did not come present in the office and after that the Labour Inspector advised the workmen to give the demand notice so after that date the workmen submitted their demand notices on 30th April, 1980. He further argued that the workmen did not take any action after giving the resignation is totally false. The workmen approached every authority for their help. The workmen have called the clerk of the Labour Officer who has come in the court as WW-4 Shri Mohinder Nath Mehta,

Assistant, Labour Office, Ballabgarh and he submitted that they received the complaints dated 15th March, 1980 and they issued the notice to that complaint twice, but no body came present from the side of the respondent. This shows, that after the resignations and receipts taken under the force and threat and the workmen approached the proper authority for their complaints, who advised them to submit their demand notices and according to their advise they submitted the demand notice as before this court, So the resignations and receipts taken under threat and duress cannot be considered as referred in AIR-1975 page 333 in case N-Ethirajullee Naidu V/S. K. R. Chinni Krishanan Chettian. Admission by a person that he signed on resignation and full and final receipts etc. under threat and under duress is not admission of execution of documents in the eye of law. And the claimant admitted their signature the documents under threat and tortured in the custody of "police". It is proved that there was a union in the factory and these 14 workmen were active members of the union and raised demand on their demand before the Deputy Labour Commissioner and Conciliation Officer. So it is clear that the workmen had not resigned of their own will but due to union activities. The witness of the respondent MW-1 has admitted this fact that there was demand notice of the workman and were settled by the labour authorities after the admission of the respondent witness of this fact it is clear that there were some demand notice of the workman and the workman who were terminated by this force and threat are the active members of the union. So there is no need of any proof after the admission of the respondent witness. According to the witness of the respondent the workmen met him out side the gate on 12th March, 1980 and the respondent witness asked them to resign then why the resignations were not taken on the same day, why on the next day. The workman want jobs and they are out of work. There was not reasoning and no ground why these 14 workmen resigned on the same day. It clears how they resigned under the threat.

After hearing the arguments of both the parties and going through the whole file, I am of the view that the plea taken by the respondent can not be believed argued by the representative of the workmen. There is a force in the arguments put forward by the workmen's representative and in the doubtful circumstances, It is clear that the resignation were taken by the respondent under threat and duress and they have not given of their own will. It is proved on the file that there was a union in the factory and the workmen terminated are their active members. They raised certain demands for the benefits of the workmen which were settled by the labour authorities. So it is clear that resignations of 14 workmen were taken under threat and duress. Usually the lot of workmen did not resign on one day. It also creat a doubt in the mind why they resigned and after resignation, they made a complaint to the labour authorities, who called the respondent to hear, but the respondent fails to appear before the labour authorities. Under these circumstances I hold that the resignations were not given voluntarily by the workmen but taken under threat and duress by the respondent. So I decide this issue in favour of the workmen and against the respondent.

Issue No. 1 :-

Issue No. 1 is as per reference ? After deciding Issue No. 2 against the respondent there is no need to give another opportunity to any party. When issue No. 2 has been decided against the respondent as discussed above and the resignations were taken under threat and duress so it is not a case of resignation of the workmen of their own will, but it was termination of the workmen, which is not justified and proper. So the workmen are entitled for their reinstatement and continuity of services and with full back wages. No order as to costs. This be read in answer to this reference.

Dated the 1st December, 1981.

HARI SINGH KAUSHIK,
Presiding Officer,

Labour Court, Haryana, Faridabad.

Endorsement No. 3465, dated the 18th December, 1981

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana, Faridabad.